Hovsepian v. Apple, Inc. Doc. 67 Att. 1

EXHIBIT B

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ACACIA MEDIA TECHNOLOGIES CORPORATION

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

ACACIA MEDIA TECHNOLOGIES CORPORATION, Plaintiff, vs. NEW DESTINY INTERNET GROUP, et. al., Defendants.	Case No. SACV 02-1040 JW (MLGx) **Consolidated Cases:** SA CV 02-1048-JW (MLGx) SA CV 02-1063-JW (MLGx) SA CV 02-1155-JW (MLGx) SA CV 03-0217-JW (MLGx) SA CV 03-0218-JW (MLGx) SA CV 03-0219-JW (MLGx) SA CV 03-0259-JW (MLGx) SA CV 03-0271-JW (MLGx) SA CV 03-0308-JW (MLGx) **Related Cases:** SA CV 03-1610-JW (MLGX) SA CV 03-1800-JW (MLGX) SA CV 03-1801-JW (MLGX) SA CV 03-1803-JW (MLGX) SA CV 03-1804-JW (MLGX) SA CV 03-1805-JW (MLGX) SA CV 03-1807-JW (MLGX) **PLAINTIFF ACACIA MEDIA TECHNOLOGIES CORPORATION'S CLAIM CONSTRUCTION BRIEF RE: CLAIM TERMS IN THE '702 PATENT**
AND ALL RELATED CASE ACTIONS.	**DATE: May 19, 2004** **TIME: 9:00 a.m.** **CTRM: Hon. James Ware**

"may be implemented in hardware or software." (Dictionary of Computing, 3rd Ed. 1990, at 155; Exhibit 14 to Block Decl.) The term "encode" is also well-known and means: "(1) to express a single character or a message in terms of a code; (2) to produce a unique combination of a group of output signals in response to each of a group of input signals; (3) to apply the rules of a code; and (4) to represent data in symbolic form using a code or a coded character set such that reconversion to the original form is possible." (IEEE Dictionary, at 436-437; Exhibit 11 to Block Decl.)[4]

The term "encoder" is further defined and narrowed by the term "sequence," which means "a continuous or connected series." (Webster's, at 1073; Exhibit 12 to Block Decl.) See also, Personalized Media Communications, LLC v. International Trade Commission, 161 F.3d 696, 705 (Fed. Cir. 1998) (a qualification placed upon a structure narrows the scope of the structures covered by the claim: "The use of the word 'digital' in conjunction with the word 'detector' merely places an additional functional constraint (extraction of digital information) on a structure (detector) otherwise adequately defined."). Thus, the type of encoder disclosed in the claim is an encoder which creates a sequence. The definition of encode which is most consistent with creating a sequence is "to produce a unique combination of a group of output signals in response to each of a group of input signals."[5]

The ordinary meaning of sequence encoder is therefore a device or software capable of producing a unique combination of a group of output signals in response to each of a group of input signals.

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[4] The term "sequencer" is another way of expressing the phrase "sequence encoder." The term "sequencer" means "any of various devices for arranging (as informational items or the events in the launching of a rocket) into or separating (as amino acids) in a sequence." (Webster's, at 1073; Exhibit 12 to Block Decl.)

[5] As there are multiple definitions for "encode" (and therefore multiple definitions for "encoder"), the Court must identify which of the possible dictionary definitions is most consistent with the use by the inventors. Texas Digital, 308 F.3d at 1203.

The Court must next examine the specification to determine whether this ordinary meaning for "sequence encoder" is consistent with the patent specification. The phrase "sequence encoder" is not used in the specification of the '702 patent[6]. Instead, the '702 patent discloses a time encoder which places formatted data into a sequence of addressable data blocks:

> The transmission system 100 of the present invention also preferably includes ordering means for placing the formatted information into a *sequence* of addressable data blocks. As shown in FIG. 2a, the ordering means in the preferred embodiment includes *time encoder* 114.
>
> * * *
>
> The *sequence* of addressable data blocks which was time encoded and output by *time encoder* 114 is preferably sent to precompression processor 115.

('702 patent, 7:50-54; 8:46-49; emphasis added).[7]

The time encoder is an encoder which places blocks of converted formatted information into a sequence or group of addressable data blocks by assigning relative time markers to data prior to subsequent compression. ('702 patent, 7:57-59; 8:6-9; 8:46-49; Fig. 2a).

From the specification's explicit descriptions of the invention, the invention clearly involved sequencing data blocks through time encoding and using a time

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[6] The fact that "sequence encoder" is not used in the specification, but only appears in the claims, is permissible. All Dental Prodx, LLC v. Advantage Dental Products, Inc., 309 F.3d 774, 779 (Fed. Cir. 2002), citing, Eiselstein v. Frank, 52 F.3d 1035, 1038 (Fed. Cir. 1995) ("However, the failure of the specification to specifically mention a limitation that later appears in the claims is not a fatal one when one skilled in the art would recognize upon reading the specification that the new language reflects what the specification shows has been invented.")

[7] The specification further states that the processing includes "placing the formatted data into a sequence of addressable data blocks by ordering means 114 (step 413c)." ('702 patent, 18:15-19). The time encoder is indicated with reference numeral 114 elsewhere in the patent. Step 413c in Figure 7 is "sequence data."

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encoder prior to subsequent compression to accomplish that task. The only sequence encoder disclosed in the specification is the time encoder – no other sequence encoder or sequencing scheme is explicitly disclosed or suggested in the specification. The time encoder's function disclosed in the specification is that time encoding of data prior to subsequent compression. ('702 patent, 8:46-48; 18:15-25; Figures 2a and 7). The inventors described numerous benefits and uses of time encoding prior to subsequent compression to the overall operation of the transmission and reception system. For instance, according to the specification, time encoding allows users to move through data in various modes by moving through frame addresses at various rates ('702 patent, 8:22-24). Time encoding makes items and subsets of items retrievable and addressable throughout the transmission system ('702 patent, 8:37-39). Time encoding makes possible realignment of audio and video data after separate audio and video compression ('992 patent, 7:60-64 and 8:9-10). Lastly, time encoding enables subsequent compression of the information to be improved, because data reduction processes may be performed in the time dimension. ('702 patent, 8:39-43). From the specification, it is evident that the invention is limited to time encoding by a time encoder prior to subsequent compression.

The facts of this case are strikingly similar to those of Phillips v. AWH Corp., 2004 U.S. App. LEXIS 6758 (Fed. Cir. April 8, 2004) (Exhibit 14 to Block Decl.). In Phillips, the invention at issue was for vandalism-resistant building modules consisting of modular wall panels. The invention is useful in the field of prison construction because the panels exhibit desirable sound and fire resistance, impact resistance (i.e., against bullets, bombs), and axial and lateral load bearing qualities. Phillips, at *2. The claim term at issue was "baffle" in the phrase "means . . . comprising internal steel baffles extending inwardly from the steel shell walls." Phillips, at *2. The Federal Circuit held that this phrase was not construed as a means-plus-function claim, because the term "baffles" is sufficient structure. Phillips, at *10.

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The court then construed "baffles" using ordinary claim construction rules. The ordinary meaning of "baffles" is "something for deflecting, checking, or otherwise regulating flow." Phillips, *10. The court then looked to the specification "'to ascertain the meaning of a claim term as it is used by the inventor in the context of the entirety of his invention.'" Phillips, at *12, quoting, Comark Communications v. Harris Corp., 156 F.3d 1182, 1187 (Fed. Cir. 1998). The court found the specification "rife with references to impact resistance, especially against projectiles, such as bullets and bombs." Phillips, at *13. The specification further explained that steel panels "form the internal baffles at angles for deflecting bullets." Id.

The court therefore found that the inventors only described their invention in the specification as having baffles oriented at angles other than 90 degrees and therefore limited the construction of "baffles" to those which are oriented at angles other than 90 degrees:

> From the specification's explicit descriptions of the invention, we conclude that the patentee regarded his invention as panels providing impact or projectile resistance and that the baffles must be oriented at angles other than 90 degrees. Baffles directed at 90 degrees cannot deflect projectiles as described in the '798 patent, and, in any event, are disclosed in the prior art.

Phillips, at *15.

The court was not persuaded by the dissent-in-part, which argued that the majority improperly focused on the "preferred embodiment," because, in this case, the preferred embodiment is the invention:

> The dissent-in-part argues that we have interpreted the claims erroneously by focusing only on the 'preferred embodiment.' We disagree. Inspection of the patent shows that baffles angled at other than 90 degrees is the only embodiment disclosed in the

> patent; it is the invention. It is impossible to derive anything else from the specification.

Phillips, at *15.

Thus, even though the term "baffles" has an ordinary meaning that includes baffles disposed both at 90 degrees and at angles other then 90 degrees, the court nevertheless limited the construction of this term to angles other than 90 degrees, because the specification made clear that this was the invention:

> It is true that claims with the non-restrictive term 'baffles' were allowed. However, the patent specification is intended to support and inform the claims, and here it makes it unmistakably clear that the invention involves baffles angled at other than 90 degrees. It is in the interests of a sound patent system and inventors, as well as the public, to hold inventors to their disclosures.[8]

Phillips, at *17.

In this case, the ordinary meaning of "sequence encoder" includes a time encoder, but could also include other sequence encoders. But, just as the only baffles disclosed in the specification in the Phillips were disposed at an angle other than 90 degrees, in this case the only sequence encoder disclosed in the '702 patent specification is a time encoder. The description in the '702 patent shows that the inventors intended that the invention be limited to a time encoder using time encoding prior to subsequent compression, because this is the only disclosure in the patent and the inventors described the many benefits and uses of time encoding prior to subsequent compression:

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[8] Acacia's original construction of "sequence encoder," set forth in its original discovery responses, was not limited to a time encoder. When Acacia made its original discovery responses, the Phillips case had not been decided by the Federal Circuit and it was not clear that a non-restrictive phrase, such as "sequence encoder," would take on a restrictive construction under the facts presented in this case. After reading the Phillips case, which was decided on April 8, 2004, Acacia determined that it could not support a broader construction and, therefore, on May 4, 2004, Acacia supplemented its proposed construction to limit the construction of "sequence encoder" to the time encoder. (See, Exhibit 15 to Block Decl.).

1. "Time encoding allows realignment of the audio and video information in the compressed data formatting system 117 after separate video and audio compression processing by precompression processor 115 and compressor 116." ('702 patent, 8:60-64).

2. "Realignment of audio and video data, system addressing of particular data bytes, and user addressing of particular portions of items are all made possible through time encoding." ('702 patent, 8:9-12).

3. "Time encoding by time encoder 114 makes items and subsets of items retrievable and addressable throughout the transmission system 100." ('702 patent, 8:37-40).

4. "Time encoding enables subsequent compression of the information to be improved because data reduction processes may be performed in the time dimension." ('702 patent, 8:39-42).

These statements in the specification evidence the inventors' intent to restrict the invention to time encoding by a time encoder prior to subsequent compression.[9] As stated in Phillips, "[i]t is impossible to derive anything else from the specification."[10] Phillips, at *15.

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[9] Because these statements in the specification evidence the inventors' intent to limit the scope of the invention to time encoding by a time encoder, this case differs from other recent cases in which there was no such evidence in the specification. See, e.g., Liebel-Flarsheim Co. v. Mallinckrodt, Inc., 358 F.3d 898, 906 (Fed. Cir. 2004); Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1327 (Fed. Cir. 2002).

[10] The fact that the '702 patent specification describes the "time encoder" as "preferred" does not mean that the claim term "sequence encoder" must be interpreted as being broader than "time encoder." "The usage 'preferred' does not of itself broaden the claims beyond their support in the specification. Wang Laboratories, Inc. v. America Online, Inc., 197 F.3d 1377, 1383 (Fed. Cir. 1999), citing, Great American Transportation Corporation Corp. v. Cryo-Trans, Inc., 93 F.3d 766, 770 (Fed. Cir. 1996) (the teaching in the specification was "not just the preferred embodiment of the invention; it is the only one described."); See also, Toro Co. v. White Consolidated Industries, Inc., 199 F.3d 1295, 1301 (Fed. Cir. 1999) ("The specification shows only a structure whereby the restriction ring is 'part of' the cover, in permanent attachment. This is not simply the preferred embodiment; it is the only